IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 395 & 396 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI BHANJIBHAI POBARU

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 395 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

MR BD DESAI-PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/02/2002

ORAL JUDGEMENT

#. The petitioners above named are the co-accused before the trial Court and they have filed this two separate Revision Applications before this Court under Section 397 read with Section 401 of the Criminal Procedure Code,

1973 (for short "the Code"). In fact, they had submitted Criminal Misc. Application Nos.507/2001 and 506/2001 before the Sessions Court at Rajkot for the temporary release of muddamal tanker being Tanker No.GJ-3-T-3930 as well as Tanker No.GJ-3-T-3938 respectively. The learned Additional Sessions Judge, Rajkot disposed of the said applications of the concerned petitioners by order dated 18.4.2001. By the said order the learned Judge allowed those applications and directed that the muddamal tanker concerned, which has been seized by the Rajkot City "B" Division Police Station under CR No.129/2000 for the offences punishable under Sections 308, 120-B, 114 and 447 of the I.P.C. read with Section 9-B and 12 of the Explosive Act and under Section 5 of the Explosive Substance Act, be handed over to the petitioners concerned on furnishing a bond of Rs.5 lacs and P.B. of like amount on the conditions mentioned in the said order. It is, however, stated at the bar that the offence punishable under Section 5 of the Explosive Act has been subsequently deleted by the order of this Court.

#. Thereafter, the petitioners submitted applications before the Sessions Court at Rajkot being Criminal Misc. Application No.1023/2001 and No.1024/2001 respectively for permission to sell and dispose of the said tanker. The learned Additional Sessions Judge dismissed those applications by orders dated 16.8.2001.

#. Feeling aggrieved by the said order of the learned Additional Sessions Judge, Rajkot, the petitioners have preferred this two Revision Applications before this Court. It has been mainly contended that the tankers are in non-use condition and, therefore, it has become useless for any purpose. That the petitioners are not in position to make use of it and, therefore, the learned Additional Sessions Judge ought to have granted permission to the petitioners to dispose them of conditionally so that the petitioners could use the sale proceed of those tanker for profitable use.

#. On receipt of the said two Revision Application by this Court rule was issued and Mr.B.D.Desai learned APP appears for the State of Gujarat in both the Revision Applications. I have heard Mr.Y.S.Lakhani and Mr.B.D.Desai for the State and have seen the records.

#. During the course of arguments a suggestion was made that the tankers i.e. the actual container may be kept intact in accordance with the order of the learned Additional Sessions Judge under the security furnished by the petitioners in each case. However, it was also

suggested that the body of the tanker container may be separated from the tanker container and the said body may be permitted to be converted into a truck so that the said truck could be profitable use for the petitioners.

#. The learned APP for the prosecution states that the tanker container is kept intact in accordance with the order of the learned Additional Sessions Judge dated 18.4.2001 and if it is retained by the petitioners in accordance with the order and under the security provided by the petitioners concerned then it is not objectionable if permission is granted for the conversion of the remaining body into a truck for the use of the petitioners in terms of the order dated 18.4.2001 in each case.

#. The learned advocate for the petitioners in each case is agreeable and, therefore, by consent following order is passed.

#. These two Revision Applications are partly these two Revision Applications are partly allowed. The petitioner is permitted to separate the tanker container bearing Tanker Registration No.GJ-3-T-3930 and Tanker Registration No.GJ-3-T-2538 from the remaining part of the body in each case.

#. The petitioner in each case shall be at liberty to convert the remaining body of the tanker into a truck and to use it in accordance with the order dated 18.4.2001 passed by the learned Additional Sessions Judge in respect of the Criminal Misc. Application referred in the judgment.

##. The container and tanker shall be kept intact by the petitioner till the final disposal of the case against them. Rest of the conditions of the order of the learned Additional Sessions Judge dated 18.4.2001 shall stand confirmed. The orders of the learned Additional Sessions Judge stand modified to the above extent. Rule is made absolute to the above extent in both the matters.

(D. P. BUCH, J.)

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